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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,259	08/01/2001	Henry Houh	EMPIR-031AUS	4028
22468	7590	04/06/2006	EXAMINER	
CHAPIN & HUANG L.L.C. WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE WESTBOROUGH, MA 01581			JEAN, FRANTZ B	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,259

Applicant(s)

HOUH, HENRY

Examiner

Frantz B. Jean

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-15,17-26 and 28-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-15,17-26 and 28-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to applicant's amendment and request for consideration filed 01/09/06. Claims 1, 3-15, 17-26, and 28-42 are pending in the application.

Claims 2, 16, and 27 have been canceled. Claims 40-42 have been added.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-15, 17-26, and 28-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (hereinafter "Wang") US patent Number 6,845,352 in view of Jackson et al. (hereinafter "Jackson") US publication Number 2002/0152305 A1.

As per claims 1 and 40, Wang teaches a test system for testing network environments and devices (col. 1 lines 13 et seq) comprising: a network processor (see fig 2; col. 4 lines 15 et seq); storage associated with said network processor (storage is inherent in the network processor); an interface coupling an output of said network processor to a communications network; (see fig 2 col. 4 line 15 to col. 5 line 37); and instructions (commands) and data within said storage, said instructions and data directing said network processor to provide at least one function (col. 5 lines 15 et seq), wherein said at least one function is selected from the group consisting of a network emulator, a network profile generator, a network profile capture tool, a packet generation tool, an application traffic generation tool, a real-time packet analysis tool, and a network packet

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capture and analysis tool (col 10 lines 36-44). Although Wang discloses a network processor as recited above, the network processor of Wang is in a finite state machine environment. Jackson is directed to system and method for resource utilization analysis in information management environment that discloses a network processor capable of performing packet processing, cell processing, look-up table, and queue management within a network switch or router and testing (fig 1-2, par 0100, 0130 and 0095). It would have been obvious to one of ordinary skill in the art of networking to utilize the network processor as disclosed by Jackson in order to provide many tasks/functions such as testing, emulation queue management and so on. One skill artisan would have uses a network processor as described above in order to implement Wang system by providing multiple functions to facilitate testing, analysis and management of network environment and devices (par 0009 of Jackson).

As per claim 3, the combination Wang-Jackson teaches a test system of claim 1 wherein said test system is utilized with a variety of different protocols (such as VOIP, TCP/IP etc... col. 1 line 27 and col 4 line 50 of Wang).

As per claim 4, the combination Wang-Jackson teaches a test system of claim 3 wherein said protocols are selected from the group consisting of TCP, TCP/IP, MPLS, SCTP, UDP, and RTP (see Wang, col. 4 lines 41-55).

As per claim 5, the combination Wang-Jackson teaches a test system of claim 1 wherein said test system is utilized with a variety of different interfaces (see Wang, fig 2; network interface, user interfaces et...).

As per claim 6, the combination Wang-Jackson teaches anticipates a test system of claim 5 wherein said interfaces are selected from the group consisting of 10Mbit Ethernet, 100Mbit Ethernet, 1 gigabit Ethernet, 1.0625 Gigabit Fibrechannel, OC-3c, OC-12, OC-12c, T1/E1, and T3/E3 (inherent in Wang see fig 2 col. 4 lines 10 et seq).

As per claim 7, the combination Wang-Jackson teaches a test system of claim 1 further comprising at least one additional network processor (see Wang, fig 2 and 5).

As per claim 8, the combination Wang-Jackson teaches a test system of claim 7 where at least one additional network processor is in communication with said network processor (see Wang, fig 2-5).

As per claim 9, the combination Wang-Jackson teaches a test system of claim 1 further comprising a Central Processing Unit (CPU), said CPU in communication with said network processor (see Wang, fig 2-5).

As per claim 10, the combination Wang-Jackson teaches a test system of claim 7 wherein said network processor is utilized as an accelerator to analyze data at line rates (see Wang, fig 2-5).

As per claim 11, the combination Wang-Jackson teaches a test system of claim 9 wherein said network processor provides data to said CPU for analysis (see Wang, fig 2-5).

As per claim 12, the combination Wang-Jackson teaches a test system of claim 9 wherein said CPU has a feedback loop to said network processor (see Wang, fig 2-5).

As per claim 13, the combination Wang-Jackson teaches a test system of claim 1 wherein said test system changes from providing a first function to providing a second function by changing the instructions and data in said storage (see Wang, fig 2-5).

As per claim 14, the combination Wang-Jackson teaches a test system of claim 1 wherein said test system provides additional functions simultaneously to the network processor by loading multiple sets of instructions in said storage (see Wang, fig 2-5).

As per claims 15 and 41, Wang teaches a computer program product comprising a computer usable medium having computer readable code thereon, including program code comprising: instructions for causing a network processor to provide at least one test function for testing network environments or devices (col. 1 lines 13 et seq; col. 5 lines 5 et seq.). Although Wang discloses a network processor as recited above, the network processor of Wang is in a finite state machine environment. Jackson is directed

to system and method for resource utilization analysis in information management environment that discloses a network processor capable of performing packet processing, cell processing, look-up table, and queue management within a network switch or router and testing (fig 1-2, par 0100, 0130 and 0095). It would have been obvious to one of ordinary skill in the art of networking to utilize the network processor as disclosed by Jackson in order to provide many tasks/functions such as testing, emulation queue management and so on. One skill artisan would have uses a network processor as described above in order to implement Wang system by providing multiple functions to facilitate testing, analysis and management of network environment and devices (par 0009 of Jackson).

Claims 17-25 depend on claim 15 that is directed to a computer program product having a computer usable medium that has a computer readable code. These claims were already discussed above. Therefore, they are rejected under the same rationale.

Claims 26, 28-39 and 42 are directed to a method of testing network environment and devices, which contain the same limitations as discussed above in the system claims. Therefore, they are rejected on the same rationale.

The prior art to Pickreign et al. (6,539,338) contains limitations that are relevant to the claimed invention. Applicant is requested to consider this prior art of record upon responding to this office action.

Response to Arguments

Applicant's arguments with respect to claims **1, 3-15, 17-26, and 28-42** are have been considered but are moot in view of the new ground(s) of rejection.

However, for purpose of clarification regarding network processor arguments made by applicant on page 9 of the 01/09/06 response, examiner would like to bring to applicant attention that the features upon which applicant relies (i.e, "the network

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processor is typically utilized to perform packet processing ... switching and routing functionality") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571 272 3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz Jean



FRANTZ B. JEAN
PRIMARY EXAMINER